

A. G. Contract No. KR901040TRD
ECS File: JPA 90-74
Project: RRP-000-6(14)P
TRACS: 0940 CH CCH SR004 01C
Section: Charleston Road @ SPTCRR

INTERGOVERNMENTAL AGREEMENT
BETWEEN
THE STATE OF ARIZONA
AND
COCHISE COUNTY

THIS AGREEMENT is entered into 11 June, 1990,
pursuant to Arizona Revised Statutes, Sections 11-951 through
11-954, as amended, between the STATE OF ARIZONA, acting by and
through its DEPARTMENT OF TRANSPORTATION (the "State") and
COCHISE COUNTY, acting by and through its Board of Supervisors
(the "County").

I. RECITALS

1. The State is empowered by Arizona Revised Statutes
Section 28-108 to enter into this agreement and has by
resolution, a copy of which is attached hereto and made a part
hereof, resolved to enter into this agreement and has delegated
to the undersigned the authority to execute this agreement on
behalf of the State.

2. The County is empowered by Arizona Revised Statutes
Section 11-251 to enter into this agreement and has by
resolution, a copy of which is attached hereto and made a part
hereof, resolved to enter into this agreement and has
authorized the undersigned to execute this agreement on behalf
of the County.

3. Congress has authorized appropriations for the
erection of automatic warning signals, automatic gate arms,
plank crossings, pavement markings, and other appurtenances.

4. Such project within the boundary of the County has
been selected by the County; the field survey of the project
has been completed; and the plans, estimates and specifications
have been prepared and, as required, submitted to the Federal
Highway Administration ("FHWA") for its approval.

NO. 14777
FILED WITH SECRETARY OF STATE
Date Filed 6/11/90
Jim Shumway
Secretary of State
By Vincent J. Greenwald

5. The only interest of the State in the project is in the acquisition of federal funds for the use and benefit of the County by reason of federal law and regulations under which funds for the project are authorized to be expended.

6. The work embraced in this agreement and the estimated cost are as follows:

Furnish and install Flashing Light Signals with Automatic Gates and Timber Plank Crossing Surface:

Furnish & Install Flashing Light Signals and Gate (SPTCRR)	= \$105,100.00
Furnish and Install Timber Grade Crossing (SPTCRR)	= \$ 9,917.00
Approach Roadway Work	= \$ 51,000.00
Preliminary & Const. Engineering	= \$ 7,000.00
Subtotal	= \$173,017.00
Federal Aid Funds @ 90%	= \$155,715.00
AZ Corp. Commission Funds @ 10% of \$163,100 (\$173,017 - \$ 9,917)	= \$ 16,310.00
County Funds @ 10% of \$ 9,917	= \$ 992.00
Two percent surcharge on \$166,017	= \$ 3,320.00*
Total County Funds	\$ 4,312.00

*This includes a 2% surcharge on the total estimated cost as per Chief Deputy State Engineer memo dated 2 FEB 82.

THEREFORE, in consideration of the mutual covenants expressed herein, it is agreed as follows:

II. SCOPE OF WORK

1. The State shall submit a program containing the aforementioned project to FHWA with the recommendation that it be approved for construction.

a. If such project is approved for construction by FHWA and the funds are available for construction of the project, the State with the aid and consent of FHWA will proceed to advertise for, receive and open bids, and subject to the concurrence of FHWA and the Local Agency, award the contract, enter into a contract with a firm to whom the award is made for the construction of the project, such project to be performed, completed, accepted and paid for in accordance with the requirements of the Standard Specifications for Road and Bridge Construction of the Highways Division, Arizona Department of Transportation. Further, the State will enter into a Project Agreement with FHWA covering the work embraced in said construction contract.

b. If such project is approved for construction by FHWA and the funds are available for construction of the project, the State with the aid and consent of FHWA will authorize the Railroad Company to proceed with the work covered by the State-Railroad Agreement and will request the maximum federal funds available.

c. Prior to the solicitation of bids, the County shall deposit funds with the State in the amount determined by the State to be necessary to match federal funds in the ratio required.

Upon completion of the construction contract, the State shall return to the County any part of the funds deposited by County remaining after County's pro rata share of the cost, as finally fixed and determined by FHWA, has been paid.

d. The State will furnish the County with a copy of the proposed Project Agreement to be entered into by the State and FHWA and the Railroad Company Agreement necessary for the full completion of this project.

e. Should some unforeseen conditions or circumstances increase the cost of said work required by a change in the extent or scope of the work called for in this agreement, the State shall not be obligated to incur any expenditure in excess of the amount of the County's deposit unless and until so authorized in writing by the County.

2. The County shall acquire, without cost to the State, the necessary right-of-way and hereby certifies that all necessary rights-of-way have been acquired.

3. The County shall remove from the proposed right-of-way all obstructions or unauthorized encroachments of whatever nature, either above or below the surface of the roadway, and hereby certifies that all obstructions and encroachments have been removed therefrom.

4. The County shall not permit or allow any encroachments, except those authorized by permit, upon, or private use of, the right of way. In the event of any unauthorized encroachment or improper use, the County shall take all necessary steps to remove or prevent any such encroachment or use; failing in which the State shall have the right to proceed with the removal or prevention thereof, the cost of such removal or prevention to be borne by the County.

5. Upon completion of construction, the County shall provide for, at its own cost and as an annual item in its budget, proper maintenance; such maintenance (exclusive of maintenance by the Railroad Company of its facilities) to include, but not be limited to, traffic signals, signs, islands, curbs and markings necessary for the purpose of regulating, warning and guiding traffic.

6. The County shall mark and sign railway-highway grade crossings in accordance with the requirements of the current edition of the Manual on Uniform Traffic Control Devices for Streets and Highways.

7. By such regulation as it may by ordinance provide, the County shall regulate parking and not permit vehicles to be left on the street in any manner other than at and parallel with the curb and to restrict parking so as to prevent conflicts with moving traffic.

III. MISCELLANEOUS PROVISIONS

1. The State assumes no financial obligation or liability under this agreement. County assumes full responsibility for the design, plans, specifications, reports, the engineering in connection therewith and the construction of the improvements contemplated, cost over-runs and construction claims to the extent that the County or its agent performed or caused such events. However, nothing in this agreement is to be construed to indemnify or release any party other than the State. It is understood and agreed that the State's participation is confined solely to securing federal aid; that any damages arising from carrying out, in any respect, the terms of this agreement or any modification thereof, shall be solely the liability of County and that County hereby agrees to save and hold harmless and indemnify from loss the State, any of its departments, agencies, officers or employees from any and all cost and/or damage incurred by any of the above and from any other damage to any person or property whatsoever, which is caused by any activity, condition, or event arising out of the performance or nonperformance of any provisions of this agreement by the State, any of its departments, agencies, officers and employees, County, any of its agents, officers and employees, or any of its independent contractors. Costs incurred by the State, any of its departments, agencies, officers or employees shall include in the event of any action, court costs, expenses of litigation and attorneys' fees.

2. The cost of the work covered by this agreement is to be borne by FHWA and the County, each in the proportion prescribed or as fixed and determined by FHWA as stipulated in this agreement. Therefore, in the event that funds to match federal funds are not made available by the Corporation Commission, the County agrees to furnish and provide the State with County funds in an amount equal to the difference between the total cost of the work provided for in this agreement and the amount of federal aid received.

3. This agreement shall remain in force and effect until completion of the work herein embraced; provided, however, that any provisions in this agreement for maintenance shall be perpetual.

4. This agreement shall become effective upon filing with the Secretary of State.

5. This agreement may be cancelled in accordance with Arizona Revised Statutes Section 38-511.

6. The provisions of Arizona Revised Statutes Section 35-214 are applicable to this contract.

7. In the event of any controversy which may arise out of this agreement, the parties hereto agree to abide by required arbitration as is set forth for public works contracts in Arizona Revised Statutes Section 12-1518(B) and (C).

8. All notices or demands upon any party to this agreement shall be in writing and shall be delivered in person or sent by mail addressed as follows:

Arizona Department of Transportation
Engineering Consultants Services
205 South 17 Avenue, Room 118E
Phoenix, AZ 85007

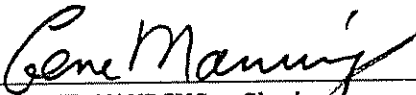
County Administrator
Cochise County Courthouse
PO Box 225
Bisbee, AZ 85603


9. Attached hereto and incorporated herein is a copy of the written determination of each party's legal counsel that the parties are authorized under the laws of this state to enter into this agreement and that the agreement is in proper form.

IN WITNESS WHEREOF, the parties have executed this agreement
the day and year first above written.

COCHISE COUNTY, ARIZONA

STATE OF ARIZONA
Department of Transportation

By 
GENE MANRING, Chairman
Board of Supervisors

By 
ROBERT P. MICKELSON
Deputy State Engineer

2799j
17MAY

RESOLUTION

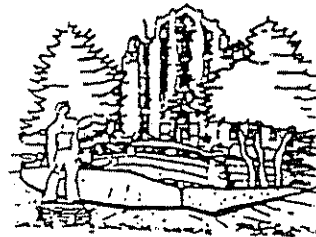
BE IT RESOLVED on this 4th day of May 1990, that I, CHARLES L. MILLER, as Director of the Arizona Department of Transportation, have determined that it is in the best interests of the State of Arizona that the Department of Transportation, acting by and through the Highways Division, to enter into an agreement with Cochise County for the purpose of defining responsibilities for the construction of railroad crossing improvements to Charleston Road at SPTCRR.

Therefore, authorization is hereby granted to draft said agreements which, upon completion, shall be submitted for approval and execution by the Deputy State Engineer.

A handwritten signature in cursive script, reading "Charles L. Miller", written in dark ink.

CHARLES L. MILLER, Director
Arizona Department of
Transportation

BOARD OF SUPERVISORS COUNTY OF COCHISE



P.O. Box 225

Bisbee, Arizona 85603

Gene Manring
Chairman
District 1

Ann English
District 2

Kim Bennett
District 3

David Hunt
Administrator
Clerk

RESOLUTION 90-31

A RESOLUTION OF THE COCHISE COUNTY BOARD OF SUPERVISORS (HEREIN-AFTER REFERRED TO AS THE BOARD) APPROVING AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE ARIZONA DEPARTMENT OF TRANSPORTATION AND THE COUNTY FOR THE INSTALLATION OF SAFETY DEVICES AND PLANKING AT THE CHARLESTON ROAD RAILROAD CROSSING.

WHEREAS, the Board is empowered by Arizona Revised Statutes Section 11-251 to lay out, maintain, control and manage public roads, and;

WHEREAS, the Board is also empowered by Arizona Revised Statutes Section 11-952 to enter into agreements with other public agencies for joint action, and;

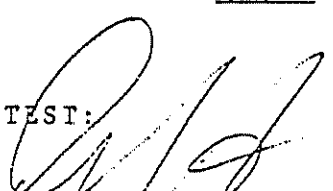
WHEREAS, Congress and the Arizona Corporation Commission have made funds available for the installation of automatic warning signals, automatic gate arms, planking and other appurtenances, and;


WHEREAS, the Board has determined that it is in the best interest of the public to enter into contract with the State for the installation of flashing light grade crossing signals with automatic arms and planking on the Charleston Road railroad crossing at the expense of the Federal Highway Administration, the Arizona Corporation Commission, and the County.

NOW, THEREFORE, BE IT RESOLVED that the Board approves this agreement and authorizes the submittal of this approved agreement to the Arizona Department of Transportation for execution.

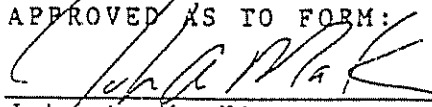
DATED this 21st day of MAY, 1990, at Bisbee, Arizona.

ATTEST:


David S. Hunt
Clerk/Administrator


Gene Manring, Chairman
Board of Supervisors
Cochise County, Arizona

APPROVED AS TO FORM:


John A. MacKinnon
Deputy County Attorney

(602) 432-5471

(FAX)

(602) 432-5016

JPA 90-74

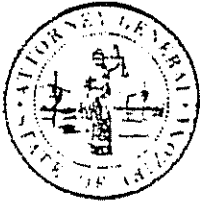
APPROVAL OF THE COUNTY ATTORNEY

I have reviewed the above referenced proposed intergovernmental agreement, between the DEPARTMENT OF TRANSPORTATION, HIGHWAYS DIVISION, and COCHISE COUNTY and declare this agreement to be in proper form and within the powers and authority granted to the County under the laws of the State of Arizona.

DATED this 18th day of May, 1990.

A handwritten signature in dark ink, appearing to read "J. M. K.", written over a horizontal line.

County Attorney



Attorney General

1275 WEST WASHINGTON

Phoenix, Arizona 85007

Robert K. Corbin

INTERGOVERNMENTAL AGREEMENT

DETERMINATION

A. G. Contract No. KR90-1040-TRD, an agreement between public agencies, has been reviewed pursuant to A.R.S. § 11-952, as amended, by the undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

No opinion is expressed as to the authority of the remaining parties, other than the State or its agencies, to enter into said agreement.

DATED this 6th day of June, 1990.

ROBERT K. CORBIN
Attorney General

A handwritten signature in black ink, appearing to read "James R. Redpath", is written over the typed name.

JAMES R. REDPATH
Assistant Attorney General
Transportation Division

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